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1. D.B.CIVIL SPECIAL APPEAL NO. 980/07
(Phooli Devi Vs. State of Raj. & Others.)
2. D.B.CIVIL SPECIAL APPEAL NO. 122/05
(Sukan Raj Vs. State of Raj. & Ors.)
3. D.B.CIVIL SPECIAL APPEAL NO. 164/05
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21. D.B.CIVIL SPECIAL APPEAL NO. 221/05
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27. D.B.CIVIL SPECIAL APPEAL NO. 227/05
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28. D.B.CIVIL SPECIAL APPEAL NO. 244/05

(Municipal Council Pali Vs.Sajjan Raj. & Ors.)
29 D.B.CIVIL SPECIAL APPEAL NO. 79/06
(Municipal Council Pali Vs.Henwant Chand & Ors.)
30. D.B.CIVIL SPECIAL APPEAL NO. 852/07
(State & Anr. Vs. Champa Lal & Ors.)

DATE OF JUDGEMENT:- 15.11.2007

HON'BLE ACTING CHIEF JUSTICE MR. RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr.J.P.Joshi)
Mr. R.R.Vyas) for the appellant.

Mr. M.D.Purohit with Mr. Anand Purohit)
Mr. Yaswant Mehta)
Mr. L.R.Upadhyay,Dy.G.A.) for respondents.

Heard learned counsel for the parties.

These appeals arise out of common facts and circumstances, and they are decided by common order as a group the writ petitions filed by the allottees of land in question have been decided by the common order, hence they are decided by this common order.

These appeals are by three sets of parties. DB Civil Special Appeals Nos. 980/2007 Phooli Devi Vs. State of Raj. & Ors., DB Civil Special Appeal (W) No. 122/2005 Sukan Raj Vs. State of Raj. & Ors., DB Civil Special Appeal No. 164/05 Ugam Raj Vs. State of Raj. & Ors., DB Civil Special Appeal No. 687/07 Kewal Chand Vs. State of Raj. & Ors. are by allottees (At serial No. 1 to 4).

DB Civil Special Appeal No. 852/07 State of Raj. & Anr. Vs. Champa Lal & Ors. is by the stated (At serial No. 30) and the remaining special appeals are (at 5 to 29) by Municipal Council, Pali.

Chequered history of the case shows that the State Government time and again, at prolonged intervals is trying to unsettle the allotments by issuing orders of cancellation without any specified reason after the transaction of execution of lease deeds in respect of allotted lands for commercial use in favour of the respective parties, and which became final.

The land in question, where the plots have been allotted to the allottees to construed shops for use of commercial purposes as per specification by the Municipal Counsel is situated in Pali township and the plots have been allotted way back to the respective allottees on 9.10.71. From the material placed by the respondents suggest that allotment of land in question has been considered for development of the agricultural produce market particularly grain market during the middle of the 1960's and, thereafter, due deliberations after considering views from various interests, including the Agricultural Produce Market Committee, Pali and the Municipality, the land in question was found fit to be allotted for the purpose in pursuance of the request of Agricultural Produce Market Committee, Pali as appears from letter dated 18.11.1968 (Annexure-1). The land in question was decided to be allotted for attracting the persons to shift their commercial activities in agriculture produce from in side city to out side city near Government Girls School, then outskirts of Pali Township.

Significantly, it is to be noticed in the light of the present controversy that time gap between the decision taken and implemented, after considering the objections raised about the site of the land was considered. Secondly the prevailing market value when the allotment took place is to be kept in view keeping it isolated from the current

Market price of the land.

By order dated 9.10.71 in all 48 Patts were issued to the desirous business men/dealers in agricultural commodities, @ 1.70 per Sq. Yards. At no stage of these proceedings it has been alleged and even doubted that the price charged way back in 1971 vastly deviated from the then prevailing market price of the land at site, so as to suggest that allotment was to confer any unjust benefit to the allottees. After allotment was made lease deeds were executed on behalf of the Municipal Council, Pali and the allottees were put in possession.

The first salvo was found after about 9 years when all the allotments were cancelled without assigning any reason with a vague assertion that the allotment is contrary to the rules, vide order dated 4.7.80. The allotments were contrary to which rules and how, nowhere finds place in the order 4.7.80 which has been placed as Annexure-3 on record in writ petition No. 376/04.

The representation against the same was made promptly by allottees before the government and the same was accepted on 2.12.80 by cancelling the said order.

Thereafter, the respondents again cancelled the said allotments after about 9 years by order dated 10.4.89 by specifying that the allotment of the plots contrary to the rules of 1974. Apparently, no notices have been issued to the allottees of land before cancellation of allotment. From the narration of facts it is abundantly clear that in 1971, when the allotments were made, Rules of 1974 had not came into existence. Apparently, cancellation of allotment appears to

have been made without application of mind. The order for cancellation dt. 10.4.89 was made subject matter of challenge through S.B.Civil Writ Petition No. 1993/89 Sukanraj Vs. State & Ors. The order dated 10.4.89 was set aside by the learned Single Judge vide judgment dated 9.9.97 on the ground that the order affecting the civil rights of the allottees could not have been made without following the rules of principle of natural justice and giving them opportunity for hearing. While setting aside the order, it was left open for the State Government to hear and pass appropriate orders in the matter of allotment of the plots in question again. Appeal against which order was dismissed by the Division Bench.

Thereafter, a public notice of hearing was issued on 25.5.2001 and proceedings were completed ex parte on 15.1.02. As it appears that a representation was made on 6.6.2001 by one Shantilal, representatives of allottees, but on subsequent dates no one has appeared.

Cancellation was made on the ground that prime facie under the Rules of 1974 the land could be sold only by auction but the land had not been sold by auction. The only other reason which has been given in the order is that since Agricultural Produce Market has been established in Pali, utility and continuity of Agriculture Produce Market Development Scheme has not remained commercially important.

This order dated 27.2.02, cancelling the allotments was subjected to several writ petitions by the respective allottees which writ petitions were allowed by the learned Single Judge by setting aside the order of cancellation observing that in the notice, no ground for

cancellation was mentioned and no reason has been given why the allotments are sought to be cancelled which could be met by the affected parties. Thus again no fair opportunity was given to allottees. Learned Single Judge also opined that the respondent was not justified in proceeding ex parte. Therefore, ex parte proceedings would not be sustained while quashing the order dated 27.2.02 the learned Single Judge directed the government to take action as early as possible after hearing both the parties and till then parties were directed to maintain the status quo.

Hence these appeals by three sets of appellants. The allottees appeals are to quash continuance of proceedings. The appeals by Municipal Council and State are to challenge the order of learned Single Jude on merits.

The primary contention of learned counsel for the allottees is that persistent recourse to new proceedings should not be allowed. Without assigning any reason and rhyme, the periodical cancellation of allotment which have became final way back in 1971 after due deliberation has resulted in persecution of allottees rather than being subjecting to rule of law through fair states action. At intervals of 9 years twice the cancellation of allotments have taken place, without even considering the part proceedings which shows that somehow the respondents wants to get back the land to secure the benefit of escalation in land price. Once the allotment was cancelled in 1980, by the State Govt. and the said order was cancelled by the State Government on considering the representation of allottees there is no reason for the state to have recourse to same action for same reason in same manner. It hardly needs an elaborate argument that show cause notice means

effective notice enabling the parties to defend themselves and not a vague notice of action to be taken without informing why intended action is sought to be taken, resulted notice of a closed and predetermined mind. Such a vague notice which does not inform the ground on which allotment made long ago are sought to be cancelled cannot be considered a notice at all in the eye of law.

Learned counsel appearing for the State and Municipal Council have sought to defend the order by raising new grounds which is not even the part of impugned order that allotments were not sustainable because lease deeds do not bear the signature of executive officer.

We declined to permit new ground which is not the foundation of the order. The chequered history of the case goes to show that firstly the government cancelled the allotment on 4.7.80 without assigning any reason and without giving any opportunity of hearing to the allottees. On the objection being raised by the allottees, the State Government itself cancelled its earlier order dated 4.7.80. Thereafter, again the said cancellation order of allotments made in favour of the allottees was made on 10.4.89. This was again without giving notice and assigning any reason. Except that, the allotment is contrary to rules of 1974. As we have noticed above, in 1971 when the allotments were made, the Rules of 1974 were not even in existence. The order dated 10.4.89 was subjected to the writ petition and the objection of the petitioner was sustained by learned Single Judge & Division Bench. Undoubtedly, the learned Single Judge left it open for the State Government to pass the appropriate order after hearing the petitioners. In the matter of allotment in question which led the initiation of proceedings

which has led to filing of these petitions, the first public notice on 16.7.99 for fixing the date of hearing reads as under;

> "निम्नलिखित धानमण्डी के भूखण्डधारियों को सूचित किया जाता है कि धानमण्डी योजना के 48 भूखण्डों के सम्बन्ध में माननीय राजस्थान उच्च न्यायालय, जोधपुर द्वारा क्रमश: गजराज बनाम स्टेट, सूकनराज बनाम स्टेट एवं चुन्नीलाल एवं खींवराज बनाम स्टेट याचिकाओं में दिये गये आदेशों की अनुपालना में माननीय स्वायत शासन मंत्री महोदय के सचिवालय स्थित कक्ष जयपुर में दिनांक 4/8/99 को 4.00 बजे सुनवाई हेतु पेशी रखी गई है। अत: आप सभी भूखण्डधारी पेशी पर उपस्थित होंवे।"

Bare reading suggest that notice for date of hearing. But nothing was stated about for what reason cancellation is proposed. Subsequently again notice for hearing was again given but no such ground was disclosed on which reply was needed.

Learned Single Judge while examining the original record of the case, found that some of the allottees demanded the "self contained notice" supplying reasons on which allotments made in their favour in 1971 are required to be cancelled by the State Government, but despite demand by the allottees, reasons for cancellation of the allotment, were not supplied to the allottees either by supplementary notice with reasons or otherwise.

The two reasons which have appeared for cancellation of the allotment in the order are after the point of time when Government decided to proceed ex parte.

Therefore, it can be taken at best that until impugned order dated 27.2.2002 was made, the reasons which were in the mind of the

Government for the cancellation of the allotment made in favour of the petitioners were only that the rules of 1974 had not been followed in giving allotment and of each of the plots could have been sold only by auction in the light of required circular which has been issued prior to 1974. In the order dated 27.2.2002 two reasons referred for cancellation of the allotment of land could not have been made except by auction in terms of Rules of 1974 and under the notification issued prior to 1974 and secondly that since allotment the Agricultural Produce Market has been set up, Dhan Nandi Scheme has ceased to exist.

We further find from the judgment under appeal that during the course of hearing, the respondents Municipality tried to support the order on number of other grounds which have not been found for last 35 years to support the order of cancellation despite two orders having been made previously.

These, facts clearly reveal that the two orders and three notices are issued with definite mind to cancel the allotment and it was an empty formality of giving opportunity of hearing to the persons whose rights were affected. The ground on which authorities wanted to proceed were disclosed to the affected persons despite demand, which was is the basic requirement of fair procedure to enable a person to avail an effective opportunity to convince the concern authorities of his view in defence before the Authority can reach its conclusion to proceed in furtherance of notice or to discharge the notice. On this touchstone the notice of 1999 itself could not have been sustained.

The two grounds disclosed in the order dated 27.2.2002 do not commend themselves on its face value. The only ground of

cancellation of allotments made in 1971 appears to be lack of auction. The Rules itself envisages the allotment otherwise than the auction by the Municipal Council. Therefore, no presumption can be drawn for invalidating of allotment made by the Municipal Council merely for want of auction.

So far the second ground of abandonment of the project of Dhan Mandiis concerned it is hardly relevant for cancellation of allotment for made commercial purposes. Abandoning the scheme of implementation of the scheme of setting up the grain market itself does not mean that land cannot be used for other commercial purposes. The lease executed in favour of the allottees put no such restriction on the user of land except for commercial purposes. If the land could not be used for grain market it can be used for commercial purposes. Moreover if the land alloted for commercial purposes is sought to be used by the allottees for other purposes in terms of the provisions of Municipalities Act, the allottee in required to make an application and such use can be permitted only on payment of conversion charges which amply take care of interest of Municipality. Thus the two grounds disclose in the order are perse not sustainable. At this distant of time also there is no whisper that allotment when made was at too low a price to smell a rat. The proposal now appears to have been made to the allottees is that if they agree to withdraw the litigation, the Municipal Council offers to allot in the same land smaller plots for residential purposes at the same price at which the plots were allotted originally wrongly which will result in recovering more than half the land which will yield crores of rupees now to the Municipal Council. This is apparent from the following resolution dated 15/7/2006 reads as under:-

> "यदि समस्त आबंटी सहमत हो एवं न्यायालय में विचाराधीन याचिका विदड़ा कर लेवें तो उन्हें समझौते के रूप में उसी योजना क्षेत्र में 30 गुणा 60 वर्गफीट आवासीय भूखण्ड आबंटित कर देवें। जिसका मूल्य परिषद नहीं वसूलेगी, नियमानुसार लीज एवं अन्य राशि आबंटी परिषद में जमा करवायेंगा इस प्रकार का समझौता करने पर कुल भूमि 29 बीघा 6 बिस्वा में से आधी भूमि आबंटन में चली जायेगी एवं शेष आधी भूमि परिषद नीलामी द्वारा विक्रय कर करोड़ों रूपये की आय अर्जित कर सकेगी।"

If anything, the above resolution reveals that real cause of cancellation appears to be extra ordinarily escalation in land prices which the Municipal Council wants to share. This justifies the apprehension entertained by the allottees as noticed above. The new ground sought to be raised, was declined by the learned Single Judge on the ground that the order passed by the Authority, Administrative quasi judicial or judicial affecting the rights of the parties cannot be supported from outside the reason contained in the order itself and in our view rightly so as the view taken by the learned Single Judge is in consonance with decision of Supreme Court in AIR 1952 SC Page 16 (Commissioner of Police Bombay Vs. Gordhandas Bhanji) the court said that;

> " Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they addressed and must be construed objectively with reference to the language mused in the order itself."

This view was consistently followed by the Courts in India

through out. To illustrate that the same principle was reiterated and reinvigorated in the case of Mohinder Singh Gill Vs. Chief Election Commissioner, New Delhi & Ors., (1978) 1 SCC 405, wherein while laying down that the expanding area of the application of principles of natural justice has made the distinction between the administrative and quasi-judicial functions no longer relevant for the purpose of examining their validity. The Court observed referring to the Gordhandas Bhaji's case (Supra):-

> "When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out."

The next question that need consideration is that progressively regular prolonged intervals of 9 years the respondents have made efforts to cancel the allotment of 1971 and no exceptional ground now been made to permit the respondent to continue with the same exercise at this distant of time merely because some new grounds were discovered. In our opinion, permitting them now to continue with the fourth innings successively when the authorities have persistently refused to adhere to basic principle of fair place since 1980. It would be permitting them to persecute the allottees rather than to proceed in accordance with law and to defeat the case of a good and fair governance. Therefore, in our opinion, these proceedings must be brought to a close now. The notice issued in 1999 for hearing being bad for want of vagueness and not informing the grounds on which proposed action is taken and the ulterior reason on which the order is founded as noticed above are also not justified to sustain the order itself,

consequently dated 27.2.2002 was rightly quashed by learned Single Judge. However, we modify the direction to proceed in pursuance of notice,which we have found to be invalid and quash the notice itself to be invalid.

Consequently, the DB Civil Special Appeals No. 980/2007, 122/2005, 164/05 & 687/2007 are allowed for the reasons stated above and rest of appeals by the Municipal Council and the State are dismissed.

No costs.

BHANWAROO KHAN], J. [RAJESH BALIA], ACTG.C.J.

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